

IOWA

Communication and Optimal Resolution Program enacted in 2015, amended in 2017

Iowa Code Title IV, Chapter 135P

(text available at <https://www.legis.iowa.gov/docs/code/2020/135P.pdf>)

Intention Behind the Legislation: Bipartisan legislation intended to encourage transparency and accountability in the case of adverse medical events while at the same time providing additional support to patients, families, and health care providers and strengthening patient safety and quality improvement processes. There was focus on the mental health benefits of candor versus litigation, maintaining doctor-patient relationships, reducing costs associated with resolution, personalization of resolution, and the ability to provide a forum for smaller value cases. The 2017 amendments broadened the participants in the healthcare system covered by the statute and clarified the events to which it applied.

Organization Key to Development of the Legislation: The Iowa Medical Society working together with the Iowa Association for Justice (a society of trial lawyers) were instrumental in the development of the legislation.

Summary of Process.

Definition of Adverse Health Care Incident: Physical injury or death related to/arising from patient care.

Mandatory versus Optional: Optional initiation of an “open discussion” into an “adverse health care incident” by a health care provider/health facility; patients may then choose to either engage/not engage in the offered open discussion. Suggested contents of open discussion also written in the language of “may” rather than “must”.

Initiation of the Process:

1. Health care provider +/- health facility sends written notice to the patient of their wish to engage in open discussion within 180 days of knowledge of the adverse health care incident.
 - Notice **MUST** include information on **(i)** the right to receive medical records, **(ii)** the right to obtain legal counsel, **(iii)** no tolling of the statute of limitations, and **(iv)** confidentiality of communication.
2. Patients who wish to engage in the offered open discussion then provide written agreement.

Contents of Open Discussion: Open discussion “may” include **(i)** investigation into the adverse health care incident, **(ii)** sharing the results of that investigation as well as steps being taking to prevent similar adverse medical events in the future with the patient, and **(iii)** an offer of compensation if warranted (if an offer of compensation is made to a patient without an attorney, they should receive notice of their right to seek legal counsel).

Oral versus Written: The notices described above and any offer of compensation must be in writing. All other discussion related to compensation should remain oral.

Statute of Limitations: The statute of limitations is NOT tolled.

Impact on Future Litigation: Communication and offers of compensation prepared as part of an open discussion are NOT an admission of liability, cannot be admitted as evidence in a future proceeding, and are privileged and confidential. Furthermore, as a condition of receiving offered compensation, a patient may be required by a health care provider/ health facility to sign a release of liability preventing them from bringing a future claim or cause of action regarding the adverse medical event.